

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

E. L. COX, COMMISSIONER OF INSURANCE
FOR THE STATE OF MICHIGAN,
Petitioner,

File No. 98-88265-CR

v

Hon. James. R. Giddings

MICHIGAN HEALTH MAINTENANCE
ORGANIZATION PLANS, INC., a
Michigan health maintenance organization,
doing business as OmniCare Health Plan,
Respondent.

E. John Blanchard (P28881)
William A. Chenoweth (P27622)
David W. Silver (P24781)
Assistant Attorneys General
Attorneys for OmniCare Health Plan
Insurance & Banking Division
P. O. Box 30754
Lansing, MI 48909
(517) 373-1160

**PETITION FOR APPROVAL OF THE REHABILITATOR'S PLAN
TO SELL ASSETS OF OMNICARE HEALTH PLAN TO COVENTRY HEALTH CARE**

Linda A. Watters, Rehabilitator of OmniCare Health Plan ("OmniCare"), by Michael A. Cox, Attorney General of the State of Michigan, moves for an order approving the Rehabilitator's plan to sell some of the assets of OmniCare to Coventry Health Care of Michigan, Inc., a Michigan corporation, as more fully described below. In support of this Petition, the Rehabilitator relies on authority granted to her by Sections 8113 and 8114 of the Insurance Code of 1956, as amended, MCL 500.8113 and MCL 500.8114, and on the facts and rationale set forth in this Petition.

I. STATEMENT OF FACTS

1. OmniCare Health Plan was placed under supervision in 1998 as permitted by Chapter 81 of the Insurance Code of 1956, MCL 500.8101 *et seq.* In July 2001, the Commissioner of the Office of Financial and Insurance Services petitioned the Court for an Order of Rehabilitation. Pursuant to MCL 500.8114, the Court appointed the Commissioner as the Rehabilitator. On September 11, 2002, the Court entered a final Order of Rehabilitation and Injunctive Relief. Under the Court's Order, the Rehabilitator is required to take such action as she considers necessary or appropriate to reform or revitalize OmniCare and to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformations so as to effectuate the rehabilitation and maintain a continuity of health care services.

2. On July 29, 2002, the Court approved OmniCare's First Amended Rehabilitation Plan. The Rehabilitation Plan provided, among other things:

- a. for the partial payment of pre-rehabilitation debts;
- b. for the issuance of surplus notes to creditors who elected to receive them;
- c. for the discharge of the remaining balance of all pre-rehabilitation claims; and
- d. that OmniCare's contracts with its providers would remain in full force and effect until further order of the Court.

3. OmniCare is a health maintenance organization currently in court-ordered rehabilitation with approximately 63,000 Medicaid members. It provides health care services in southeast Michigan. A majority of its members are recipients of health services under Medicaid.

4. The Court has jurisdiction over creditor claims against OmniCare. The Rehabilitator's plan to sell some of the assets of OmniCare presented by this Petition will generate additional funds towards satisfaction of creditor claims against OmniCare.

5. OmniCare's primary business is a state Medicaid contract with the Michigan Department of Community Health (MDCH). The current Medicaid contract expires on September 30, 2004.

6. An Invitation to Bid, Bid Number 071I4001168, was issued March 23, 2004 by MDCH. The new Medicaid contract will cover the period from October 1, 2004 through September 30, 2006, with up to three one-year extensions. The deadline for submitting a bid to MDCH is Friday, May 14, 2004.

7. In order to receive a 2004 Medicaid contract, a bidder must meet all applicable statutory financial requirements set forth in the Michigan Insurance Code, including: net worth, minimum capital and surplus, and Risk Based Capital (RBC). Invitation to Bid, Section IV-B, p

76. In addition, pursuant to the Invitation to Bid, a bidder who is purchasing a Medicaid HMO must submit the following:

1. An executed fully binding purchase agreement, dated on or before May 15, 2004 between the purchasing bidder and the HMO(s) being purchased; or
 2. An executed fully binding funding agreement, dated on or before May 15, 2004, between a funding agency and the bidder; or
 3. An Order from the Court authorizing the sale or purchase of one or more HMOs; dated on or before May 15, 2004. (Emphasis added).
- Invitation to Bid, Section IV-B, p 77.

8. OmniCare has reported to the Office of Financial and Insurance Services on Form FIS 320 (December 31, 2003) that it has a negative working capital reserve of \$13.5 million. Pursuant to MCL 500.3555(b) OmniCare shall not have a negative working capital reserve.

9. OmniCare does not meet the Risk Based Capital (RBC) requirements. Pursuant to MCL 500.3551(4), the Commissioner is required to consider RBC requirements, as developed by the National Association of Insurance Commissioners, in order to determine compliance with MCL 500.403, which requires that OmniCare be "safe, reliable and entitled to public

confidence." RBC requirements are described in Insurance Bureau Bulletin 98-02. The established standard is 200% RBC, to measure minimum needed capital given the health plan's size and risk profile. OmniCare is at 0 % RBC because it has negative capital and surplus of \$12.5 million, which is \$23 million short of 200% RBC level.

10. In order to meet the financial requirements to receive the 2004 Medicaid contract, OmniCare would need a cash infusion of at least \$23 million. The Rehabilitator has been unable to locate any source willing to fund this level of cash infusion in OmniCare.

11. Because OmniCare does not now and will not on May 14, 2004 meet the statutory working capital and RBC requirements, it is ineligible to receive a new Medicaid contract in 2004.

12. The Rehabilitation Plan approved by the Court contemplates that OmniCare would be rehabilitated over a 5 to 7 year period. However, MDCH's decision to rebid the Medicaid contract and only award bids to health plans that satisfy the statutory financial requirements presents a change in circumstances that renders the previously approved Rehabilitation Plan no longer viable in any event.

13. Without a sale of membership assets and a qualified, eligible bidder, the MDCH will reassign OmniCare's Medicaid members to other Michigan HMOs effective no later than October 1, 2004, the expected effective date of the new Medicaid contract. The MDCH will transfer the members without compensation to OmniCare or its creditors.

II. THE AUTHORITY OF THE REHABILITATOR TO ACT

14. The Rehabilitator is acting pursuant to authority granted her in Section 8114 of the Insurance Code of 1956, MCL 500.8114, which provides in pertinent part:

(2) The rehabilitator may take such action as he or she considers necessary or appropriate to reform and revitalize the insurer including, but not limited to, the

powers in section 8121(1)(f), (l), (m), (r), and (u). The rehabilitator has all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator has full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

* * *

(4) If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he or she shall prepare a plan to effect those changes. Upon application of the rehabilitator for approval of the plan, and after notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. A plan approved under this section shall be, in the court's judgment, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall implement the plan. (Emphasis added).

15. The Rehabilitator has legal title to all of the assets of OmniCare pursuant to Section 8113 of the Insurance Code of 1956, MCL 500.8113, which provides in pertinent part:

(1) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to take immediate possession of the assets of the insurer, and to administer them under the court's general supervision. The filing or recording of the order with the clerk of the circuit court or register of deeds for the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

(Emphasis added).

III. THE REQUEST FOR BID PROCESS

16. Faced with the eventual reassignment of its approximately 63,000 Medicaid members to other health maintenance organizations without compensation and to marshal and preserve the maximum value of OmniCare's assets for the benefit of the estate, the Rehabilitator

determined that it was necessary, and in the best interests of the members, creditors, providers, and the public to solicit offers from interested parties for the sale of OmniCare or its assets to another entity that would be eligible to bid on the Medicaid contract.

17. A Request for Bid letter on behalf of the Rehabilitator was issued on March 9, 2003, soliciting offers from interested buyers to submit their best and final offer to the Rehabilitator for the purchase of assets of The Wellness Plan, OmniCare Health Plan, or both. A representative copy of the Request for Bid letter is attached to this Petition at Tab 1.

18. The Request for Bid letter set forth a timeline for the bid process, and enumerated criteria that the Rehabilitator would consider when making her best judgment to determine which offer or combination of offers would best meet the needs of the creditors, members, and the public as a whole. The factors that were considered by the Rehabilitator in evaluating the proposed bids included:

- a. Are the bids fair and equitable to the creditors, members and the public as a whole?
- b. Will the bids provide full payment to the creditors?
- c. How are post rehabilitation liabilities treated?
- c. What assets are being acquired?
- e. Commitment to employ current staff.
- f. How much is being paid?
- g. Operational experience and history of the bidder and its management, including regulatory history.
- h. Availability of funds to complete the transaction and any contingencies related to the availability of funds.
- i. Financial reserves and solvency of the bidder and the proposed new entity, if any.

19. On March 17, 2004, the Rehabilitator received offers from three interested parties for the purchase of certain assets of OmniCare.

20. The bidders were interested in purchasing OmniCare's Medicaid members and certain assets, such as the provider network, and its certificate of authority to operate a health maintenance organization in Michigan.

21. The Rehabilitator carefully reviewed the merits of each of the three proposed offers to determine which offer was in the best interest of OmniCare, its members, the creditors, the providers, and the public, and which offer best satisfied the criteria set forth in the Invitation to Bid issued by the MDCH.

22. The Rehabilitator determined that the offer from Coventry Health Care, Inc. best satisfied the selection criteria and the interests of OmniCare, its members, the creditors, including the providers, and the public. The offer from Coventry Health Care, Inc. will:

- a. maximize the amount of return to the creditors of OmniCare;
- b. provide continuity of care to the approximately 63,000 Medicaid members of OmniCare;
- c. allow the continuation of services under certain existing provider agreements in accordance with the definitive purchase agreement and this Court's order; and
- d. provide continued employment to some of the current OmniCare employees.

23. The Rehabilitator signed a binding Letter of Intent with Coventry Health Care, Inc. on April 2, 2004 for the purchase of certain assets of OmniCare, subject to the contingencies set forth in the attached Letter of Intent and approval of this Court. A copy of the Letter of Intent is attached to this Petition at Tab 2.

III. SUMMARY OF COVENTRY'S OFFER TO PURCHASE ASSETS OF OMNICARE

24. Coventry Health Care, Inc. is a publicly traded managed care stock corporation headquartered in Bethesda, Maryland. Coventry Health Care, Inc. has demonstrated its ability to successfully provide managed health care for more than 2.4 million members, and 324,000 Medicaid members in six markets. At the end of 2003, Coventry Health Care, Inc. had cash and

investments that totaled \$1.4 billion, with available cash more than adequate to complete the transaction.

25. In accordance with the attached Letter of Intent, Coventry Health Care of Michigan, Inc., a wholly owned subsidiary of Coventry Health Care, Inc. (which subsidiary was created solely as the acquisition vehicle for the contemplated transaction), will acquire:

- a. OmniCare's HMO license;
- b. OmniCare's Medicaid members, which will be transferred and assigned effective October 1, 2004;
- c. the rights to OmniCare's contracted provider network to service the Medicaid membership being acquired;
- d. the right to hire certain members of OmniCare's current staff to the extent possible given the position openings that will be created. Coventry Health Care of Michigan, Inc. will use reasonable best efforts to interview, and consider current employees that meet or exceed specific job requirements.

26. In order to successfully bid on a 2004 Medicaid contract Coventry Health Care of Michigan, Inc. must have a network adequate to provide care to OmniCare's Medicaid members. Due to the deadlines imposed by MDCH, Coventry Health Care of Michigan, Inc. will not have sufficient time to renegotiate new contracts with all of OmniCare's providers.

27. Therefore, an extension of the existing provider contract network is necessary to ensure uninterrupted health care services for the members, and for Coventry Health Care of Michigan, Inc. to have a provider network in place upon the effective date of this transaction. On July 29, 2002, the Court affirmed the continuation of all existing provider agreements with OmniCare during the rehabilitation proceeding, which was expected to last five to seven years. The Rehabilitator requests that the Court order that in the event that Coventry Health Care of Michigan, Inc. has not executed renegotiated provider contracts with OmniCare's existing provider network before October 1, 2004, then all of OmniCare's rights and obligations under

such existing provider contracts be assigned and transferred to Coventry Health Care of Michigan, Inc. effective October 1, 2004, and such existing provider agreements and contracts be extended for 12 months until September 30, 2005.

28. Coventry Health Care of Michigan, Inc.'s acquisition expressly excludes any and all liabilities of OmniCare. All OmniCare liabilities incurred at any time, known and unknown, disclosed and undisclosed, will remain with the OmniCare estate. If Coventry Health Care of Michigan, Inc. is awarded a Medicaid contract by MDCH, then it will provide prospective coverage to the acquired OmniCare Medicaid members effective October 1, 2004.

29. Coventry Health Care of Michigan, Inc. has committed to pay in cash to OmniCare an amount calculated as \$200 multiplied by the number of active Medicaid members of OmniCare that continue their enrollment with Coventry Health Care of Michigan, Inc. into the contract year beginning October 1, 2004, as adjusted to reflect the actual number of Medicaid members that continue their enrollment with Coventry Health Care of Michigan, Inc. through December 31, 2004. A cash payment of \$100 per member would be made 45 days after October 1, 2004. The remainder of the purchase price would be paid based upon the number of such members that continued enrollment with Coventry Health Care of Michigan, Inc. through December 31, 2004 multiplied by \$200, less the amount previously paid.

IV. TIMETABLE, COURT APPROVAL, CLOSING, EFFECTIVE DATE

30. The controlling date for this transaction is Friday, May 14, 2004, which is the last business day that MDCH will accept bids for the new Medicaid contract.

31. Because Coventry Health Care of Michigan, Inc. is purchasing, among other things, OmniCare's HMO license and Medicaid members, it must submit an executed fully binding

purchase agreement, dated on or before Saturday, May 15, 2004; or an Order from the Court authorizing the sale or purchase of OmniCare, dated on or before Saturday, May 15, 2004.

Invitation to Bid, IV-B, p 77.

32. The Rehabilitator and Coventry Health Care of Michigan, Inc. anticipate they can finalize and execute a definitive asset purchase agreement before May 14, 2004. The parties will close on the transaction by September 30, 2004, and the sale will have an effective date of October 1, 2004.

33. In order to meet the established timelines and to give effect to the contemplated transaction set forth in the attached Letter of Intent, it is necessary for the Court to give its approval of the proposed sale of certain OmniCare assets to Coventry Health Care of Michigan, Inc. before May 14, 2004.

VI. NOTICE

34. The Rehabilitator will provide Notice to interested persons as provided by the Court's Order dated April 8, 2004.

RELIEF REQUESTED

The Rehabilitator's plan to sell certain assets of OmniCare to Coventry Health Care of Michigan, Inc. has been designed to provide the greatest relief possible to the creditors of OmniCare while protecting the interest of its members and the public. The Rehabilitator's plan is fair and equitable to OmniCare's creditors, members and the public. Accordingly, the Rehabilitator's proposed transaction with Coventry Health Care of Michigan, Inc. as set forth in the attached Letter of Intent should be approved.

Based on the foregoing, the Rehabilitator requests that the Court enter an order that:

1. Finds that the transaction set forth in the attached Letter of Intent is an arm's length transaction entered into in good faith by the Rehabilitator and Coventry Health Care of Michigan, Inc.

2. Finds that the Rehabilitator's sale of certain OmniCare assets to Coventry Health Care of Michigan, Inc. under the terms and conditions set forth in the attached Letter of Intent is fair and equitable and in the best interests of the creditors, providers, and members of OmniCare and the public as a whole.

3. Finds that pursuant to the transaction described in the attached Letter of Intent, Coventry Health Care of Michigan, Inc. does not, in any manner whatsoever, assume any liability arising out of or relating to the business, claims, or liabilities of OmniCare existing on the date that the Order is entered, now or at any time in the future.

4. Finds that Coventry Health Care of Michigan, Inc. is not a successor-in-interest to OmniCare or the Rehabilitator arising out of or relating to the proposed transaction set forth in the attached Letter of Intent.

5. Approves the proposed transaction and authorizes the Rehabilitator to sell certain OmniCare assets to Coventry Health Care of Michigan, Inc. on the terms and conditions set forth in the attached Letter of Intent.

6. Approves and authorizes the assignment and transfer of OmniCare's license to Coventry Health Care of Michigan, Inc. effective October 1, 2004, in accordance with the attached Letter of Intent and subject to approval by the appropriate government agency.

7. In the event that Coventry Health Care of Michigan, Inc. has not executed a renegotiated provider contract with an existing OmniCare provider before October 1, 2004, approves and authorizes the assignment and transfer of all OmniCare's rights and obligations

under such existing provider contract to Coventry Health Care of Michigan, Inc. effective October 1, 2004, and further directs and orders that such existing provider contract is extended for 12 months and remains in full force and effect until September 30, 2005.

8. Approves and authorizes the assignment and transfer to Coventry Health Care of Michigan, Inc. any and all agreed upon assets, free and clear of all liens, encumbrances, obligations, and liabilities in accordance with the attached Letter of Intent.

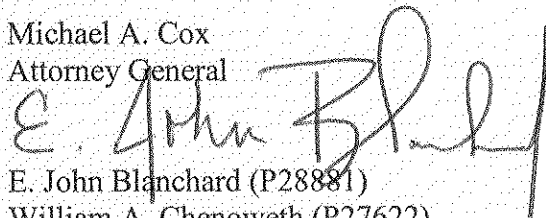
9. Directs and orders that all OmniCare liabilities incurred at any time, known and unknown, disclosed and undisclosed, remain with the OmniCare estate and shall be paid, discharged or otherwise resolved as part of this Court's receivership proceedings.

10. Authorizes the Rehabilitator to take such steps as may be necessary to effectuate the sale and transfer of its member, contracts, and certificate of authority to Coventry Health Care of Michigan, Inc. in accordance with the attached Letter of Intent, including but not limited to, negotiating and executing a definitive asset purchase agreement.

11. Provides such other and further direction as may be necessary to fully implement the proposed transaction.

Respectfully submitted,

Michael A. Cox
Attorney General



E. John Blanchard (P28881)
William A. Chenoweth (P27622)
David W. Silver (P24781)
Assistant Attorneys General
Insurance & Banking Division
P. O. Box 30754
Lansing, MI 48909
(517) 373-1160
Fax: (517) 335-6755

Date: April 8, 2004